

(ii) *Liability for tax.* The person that owns the gasohol at the time gasoline is separated from the gasohol is liable for the tax imposed under paragraph (f)(1)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed under paragraph (f)(1)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(2) *Failure to blend—(i) Imposition of tax.* Tax is imposed on the entry, removal, or sale of gasoline (including excess liquid described in paragraph (b)(2) of this section) with respect to which tax was imposed at a gasohol production tax rate if—

(A) The gasoline was not blended into gasohol; or

(B) The gasoline was blended into gasohol but the gasohol production tax rate applicable to the type of gasohol produced is greater than the rate of tax originally imposed on the gasoline.

(ii) *Liability for tax.* (A) In the case of gasoline with respect to which tax was imposed at the gasohol production tax rate under paragraph (c)(1)(i) of this section, the person liable for the tax imposed by paragraph (f)(2)(i) of this section is the person that was liable for tax on the entry or removal.

(B) In the case of gasoline with respect to which tax was imposed at the gasohol production tax rate under paragraph (c)(1)(ii) of this section, the person that bought the gasoline in connection with the entry or removal is liable for the tax imposed under paragraph (f)(2)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed on gasoline described in paragraph (f)(2)(i)(A) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the rate of tax previously imposed on the gasoline. The rate of tax imposed on gasoline described in paragraph (f)(2)(i)(B) of this section is the difference between the gasohol production tax rate applicable to the type of gasohol produced and the rate of tax previously imposed on the gasoline.

(iv) *Example.* The following example illustrates this paragraph (f)(2):

Example. (i) A registered gasohol blender bought gasoline in connection with a re-

moval described in paragraph (c)(1)(ii) of this section. Based on the blender's certification (described in paragraph (c)(2) of this section) that the blender would produce 10 percent gasohol with the gasoline, tax at the gasohol production tax rate applicable to 10 percent gasohol was imposed on the removal.

(ii) The blender then produced a mixture by splash blending in a tank holding approximately 8000 gallons of mixture. The applicable delivery tickets show that the mixture was blended by first pumping 7220 metered gallons of gasoline into the empty tank, and then pumping 780 metered gallons of alcohol into the tank. Because the mixture contains 9.75 percent alcohol (as determined based on the delivery tickets provided to the blender) the entire mixture qualifies as 7.7 percent gasohol, rather than 10 percent gasohol.

(iii) Because the 7220 gallons of gasoline were taxed at the gasohol production tax rate applicable to 10 percent gasohol but the gasoline was blended into 7.7 percent gasohol, a failure to blend has occurred with respect to the gasoline. As the person that bought the gasoline in connection with the taxable removal, the blender is liable for the tax imposed under paragraph (f)(2)(i) of this section. The amount of tax imposed is the difference between—

(A) 7220 gallons times the gasohol production tax rate applicable to 7.7 percent gasohol; and

(B) 7220 gallons times the gasohol production tax rate applicable to 10 percent gasohol.

(iv) Because the gasohol does not contain exactly 7.7 percent alcohol, the benefit of the gasohol production tax rate with respect to the alcohol is less than the amount of the alcohol mixture credit under section 40(b) (determined before the application of section 40(c)). Accordingly, the blender may be entitled to claim an alcohol mixture credit for the alcohol used in the gasohol. Under section 40(c), however, the amount of the alcohol mixture credit must be reduced to take into account the benefit provided with respect to the alcohol by the gasohol production tax rate.

(g) *Effective date.* This section is effective August 7, 1995.

[T.D. 8609, 60 FR 40082, Aug. 7, 1995, as amended by T.D. 8659, 61 FR 10457, Mar. 14, 1996; T.D. 8879, 65 FR 17157, Mar. 31, 2000]

§ 48.4081-7 Taxable fuel; conditions for refunds of taxable fuel tax under section 4081(e).

(a) *Overview.* This section provides reporting requirements and other conditions that a person paying tax to the government under section 4081 must satisfy to receive a refund (but not a

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credit) under section 4081(e) with respect to taxable fuel on which a prior tax was paid to the government under section 4081. No credit against any tax imposed under the Internal Revenue Code is allowed under this section.

(b) *Conditions to allowance of refund.* A claim for refund of tax imposed by section 4081 with respect to taxable fuel is allowed under section 4081(e) and this section only if—

(1) A tax imposed by section 4081 with respect to the taxable fuel was paid to the government and not credited or refunded (the “first tax”);

(2) After imposition of the first tax, another tax was imposed by section 4081 with respect to the same taxable fuel and was also paid to the government (the “second tax”);

(3) The person that paid the second tax to the government has filed a timely claim for refund that contains the information required under paragraph (d) of this section; and

(4) The person that paid the first tax to the government has met the reporting requirements of paragraph (c) of this section.

(c) *Reporting requirements—(1) Reporting by persons paying the first tax.* Except as provided in paragraph (c)(3) of this section, the person that paid the first tax under § 48.4081-3 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in paragraph (c)(2) of this section (or such other model report as the Commissioner may prescribe) and contains all information necessary to complete such model report (the first taxpayer’s report). A first taxpayer’s report must be filed with the return to which the report relates (or at such other time, or in such other manner, as prescribed by the Commissioner).

(2) *Model first taxpayer’s report.*

FIRST TAXPAYER’S REPORT

1. _____
First Taxpayer’s name, address, and employer identification number
2. _____
Name, address, and employer identification number of the buyer of the taxable fuel subject to tax
3. _____

Date and location of removal, entry, or sale

4. _____
Volume and type of taxable fuel removed, entered, or sold
5. Check type of taxable event:
☐ Removal from refinery
☐ Entry into United States
☐ Bulk transfer from terminal by unregistered position holder
☐ Bulk transfer not received at an approved terminal
☐ Sale within the bulk transfer/terminal system
☐ Removal at the terminal rack
☐ Removal or sale by the blender
6. _____

Amount of Federal excise tax paid on account of the removal, entry, or sale

The undersigned taxpayer (the “Taxpayer”) has not received, and will not claim, a credit with respect to, or a refund of, the tax on the taxable fuel to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer’s knowledge and belief, they are true, correct and complete.

Signature and date signed

Printed or typed name of person signing this report

Title

(3) *Optional reporting for certain taxable events.* Paragraph (c)(1) of this section does not apply with respect to a tax imposed under § 48.4081-2 (removal at a terminal rack), § 48.4081-3(c)(1)(ii) (nonbulk entries into the United States), or § 48.4081-3(g) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under section 4081 with respect to the taxable fuel, that person should (but is not required to) file a first taxpayer’s report.

(4) *Information provided to subsequent owners, etc.—(i) By person required to file first taxpayer’s report.* A first taxpayer required to file a first taxpayer’s report under paragraph (c)(1) of this section must give a copy of the report to—

(A) The person to whom the first taxpayer sells (within the meaning of § 48.4081-1) the taxable fuel within the bulk transfer/terminal system; or

(B) The owner of the taxable fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(ii) *By person filing optional first taxpayer's report.* A first taxpayer filing a first taxpayer's report under paragraph (c)(3) of this section should (but is not required to) give a copy of the report to—

(A) The person to whom the first taxpayer sells the taxable fuel; or

(B) The owner of the taxable fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(iii) *By person receiving first taxpayer's report.* A person that receives a copy of the first taxpayer's report and subsequently sells (within the meaning of § 48.4081-1) the taxable fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(4)(iv) of this section to the buyer. A person that receives a copy of the first taxpayer's report and subsequently sells the taxable fuel outside the bulk transfer/terminal system should (but is not required to) give the copy and a statement that satisfies the requirements of paragraph (c)(4)(iv) of this section to the buyer, if that person expects that another tax will be imposed under section 4081 with respect to the taxable fuel.

(iv) *Form of statement—(A) In general.* A statement satisfies the requirements of this paragraph (c)(4)(iv) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in paragraph (c)(4)(iv)(B) of this section (or such other model statement as the Commissioner may prescribe) but need not be in the same format.

(B) *Model statement describing subsequent sale.*

STATEMENT OF SUBSEQUENT SELLER

1. _____

Name, address, and employer identification number of seller in subsequent sale

2. _____

Name, address, and employer identification number of buyer in subsequent sale

3. _____

Date and location of subsequent sale

4. _____

Volume and type of taxable fuel sold

The undersigned seller (the "Seller") has received the copy of the first taxpayer's report provided with this statement in connection with Seller's purchase of the taxable fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

Signature and date signed _____

Printed or typed name of person signing this statement _____

Title _____

(v) *Sale to multiple buyers.* If the first taxpayer's report relates to taxable fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the taxable fuel is divided and each buyer must be given a copy of the report.

(d) *Form and content of claim—(1) In general.* The following rules apply to claims for refund under section 4081(e):

(i) The claim must be made by the person that paid the second tax to the government and must include all the information described in paragraph (d)(2) of this section.

(ii) The claim must be made on Form 8849 (or such other form as the Commissioner may designate) in accordance with the instructions on the form. The form should be marked *Section 4081(e) Claim* at the top. Section 4081(e) claims must not be included with a claim for a refund under any other provision of the Internal Revenue Code.

(2) *Information to be included in the claim.* Each claim for a refund under section 4081(e) must contain the following information with respect to the taxable fuel covered by the claim:

(i) Volume and type of taxable fuel.

(ii) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).

(iii) Amount of second tax that claimant paid to the government and a statement that claimant has not included the amount of this tax in the sales price of the taxable fuel to which this claim relates and has not collected that amount from the person that bought the taxable fuel from claimant.

(iv) Name, address, and employer identification number of the person that paid the first tax to the government.

(v) A copy of the first taxpayer's report that relates to the taxable fuel covered by the claim.

(vi) If the taxable fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that taxable fuel.

(e) *Time for filing claim.* A claim for refund under section 4081(e) may be filed any time after the claimant has filed the return of the second tax and before the end of the period prescribed by section 6511 for the filing of a claim for a refund.

(f) *Examples.* The following examples illustrate the provisions of this section.

Example 1. (i) A is a taxable fuel registrant that owns 10,000 gallons of gasoline, and on April 5, 1996, is transporting the gasoline by barge on a waterway in the United States. That day, A sells the gasoline to B, a person that is not a taxable fuel registrant. A is liable for tax on the sale under § 48.4081-3(f). A pays this tax to the government and attaches to its return of the gasoline tax for the 2nd quarter of 1996 the first taxpayer's report described in paragraph (c) of this section. A also gives a copy of this report to B.

(ii) On April 9, 1996, B sells the gasoline to C, a taxable fuel registrant. B also gives C a copy of the first taxpayer's report and the statement of subsequent seller (required under paragraph (c)(4) of this section). On April 14, 1996, the gasoline is removed from a terminal at the rack. C is the position holder of the gasoline at the time of the removal and thus is liable for tax on the removal under § 48.4081-2(c)(1). C pays this tax to the government.

(iii) After C has filed a return of the second tax and before the end of the period prescribed by section 6511 for filing a claim for a refund, C files a claim for a refund of the second tax. The claim is in the form prescribed in paragraph (d)(2) of this section. C includes with its claim a copy of the first taxpayer's report and statement of subse-

quent seller. Because the conditions to allowance of a refund under paragraph (b) of this section have been met, C is allowed a refund of the second tax.

Example 2. The facts are the same as in *Example 1* except that A does not pay the tax to the government. Because the first tax was not paid to the government as required by paragraph (b)(1) of this section, the conditions to allowance of a refund under paragraph (b) of this section have not been met. Therefore, C is not allowed a refund of the second tax.

(g) *Effective date.* This section is effective in the case of taxable fuel with respect to which the first tax is imposed after September 30, 1995.

[T.D. 8421, 57 FR 32424, July 22, 1992, as amended by T.D. 8609, 60 FR 40086, Aug. 7, 1995; T.D. 8659, 61 FR 10457, Mar. 14, 1996; T.D. 8879, 65 FR 17157, Mar. 31, 2000]

§ 48.4081-8 Taxable fuel; measurement.

(a) *In general.* Volumes of taxable fuel may be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit.

(b) *Effective date.* This section is applicable January 1, 1994.

[66 FR 27597, May 18, 2001]

§ 48.4082-1 Diesel fuel and kerosene; exemption for dyed fuel.

(a) *Exemption.* Tax is not imposed by section 4081 on the removal, entry, or sale of any diesel fuel or kerosene if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The diesel fuel or kerosene satisfies the dyeing and marking requirements of paragraphs (b), (c), and (d) of this section.

(b) *Dyeing requirements.* Diesel fuel or kerosene satisfies the dyeing requirement of this paragraph (b) only if the diesel fuel or kerosene contains—

(1) The dye Solvent Red 164 (and no other dye) at a concentration spectrally equivalent to at least 3.9 pounds of the solid dye standard Solvent Red 26 per thousand barrels of diesel fuel or kerosene; or

(2) Any dye of a type and in a concentration that has been approved by the Commissioner.

(c) *Marking requirements.* [Reserved]